

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TIMOTHY DAVID MURPHY,

Plaintiff,

v.

JOHN JOBOULIAN, et al.,

Defendants.

Case No. 1:15-cv-657

HON. JANET T. NEFF

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**OPINION AND ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving Plaintiff's Eighth Amendment claim. Defendants filed a motion for summary judgment. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending Defendants' motion be granted and this action terminated. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff argues that the Magistrate Judge "does not properly analyze Plaintiff's Eighth Amendment claim, as it is not on par with [1] case law, nor [2] established facts of the record" (Pl. Obj., ECF No. 73 at PageID.571). In support of his first argument that the Magistrate Judge improperly applied case law, Plaintiff relies on the decision in *Vance v. Prison Health Services*, No. 2:10-cv-217, 2011 WL 4346395, at \*6 (W.D. Mich. Sept. 15, 2011) (*id.* at PageID.572-573).

However, Plaintiff cites *Vance* for the first time in his Objection, meaning the case was not before the Magistrate Judge for consideration. In any event, for the reasons more fully stated by Defendants in their response to Plaintiff's objections (ECF No. 74 at PageID.589-591), the case does not compel the result Plaintiff seeks. While the *Vance* court stated that the plaintiff's claims amounted to more than a disagreement with his medical care, it directed the defendants to address and bring forth evidence regarding the plaintiff's claims of disregarded pain reports. *Vance* is therefore factually distinct from the present case. As delineated in the Report and Recommendation, the record in this case contains evidence of numerous dental visits and attempts to control Plaintiff's pain. In short, Plaintiff's objection fails to show any error in the Magistrate Judge's legal analysis.

As for Plaintiff's second argument that the Magistrate Judge did not properly analyze his Eighth Amendment claim in light of "established facts of the record," Plaintiff does not specifically identify which facts in the record he believes the Magistrate Judge improperly analyzed. Plaintiff emphasizes that he submitted multiple kites indicating he was in severe pain and that over-the-counter medication was not effective (ECF No. 73 at PageID.573). However, Defendants' expert, Dr. Komyathy, found that Defendant dentists did not prescribe stronger pain medication for the legitimate medical reason of avoiding dangerous drug interactions (ECF No. 50-12 at PageID.303). Also, Defendants Byard, Minnich, and Murphy testified that the antibiotics they prescribed would alleviate pain (ECF No. 50-6 at PageID.241, ECF No. 50-8 at PageID.261, ECF No. 50-9 at PageID.270). Last, the unrefuted expert report of Dr. Komyathy demonstrated that the wait Plaintiff endured for his tooth extraction was comparable to that of patients outside of prison (ECF No. 50-12 at PageID.304). Plaintiff's general objection fails to show any error in the Magistrate Judge's factual analysis.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

**IT IS HEREBY ORDERED** that the Objections (ECF No. 73) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 70) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Motion for Summary Judgment (ECF No. 49) is GRANTED.

**IT IS FURTHER ORDERED** that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: September 15, 2017

/s/ Janet T. Neff  
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JANET T. NEFF  
United States District Judge